



**U.S. Customs and
Border Protection**

OBP 80/9

MAR 7 2014

MEMORANDUM FOR:

All Personnel

FROM:

Michael J. Fisher
Chief
U.S. Border Patrol

SUBJECT: Use of Safe Tactics and Techniques

A handwritten signature in black ink, appearing to read "Michael J. Fisher".

As Chief of the United States Border Patrol, our border security mission and your safety are my highest priorities and ultimate responsibility. The dangerous situations you encounter require you to make split-second decisions in circumstances that are tense, uncertain, and rapidly evolving. U.S. Border Patrol agents are among the most frequently assaulted law enforcement personnel in the country. Since 2007, there have been over 6,000 assaults against Border Patrol agents resulting in numerous injuries to our agents and the tragic death of three agents. In the face of these dangers, Border Patrol agents continue to show exemplary restraint and professionalism. Since 2010, agents have been assaulted with rocks 1,713 times. In these situations, agents responded and used deadly force 43 times which regrettably resulted in the death of 10 individuals.

While these risks exist, we need to ensure that some of the tactics being employed do not place agents in undue danger resulting in violent confrontations where the use of force became necessary. While you should never have reservations about performing your duties or using the appropriate level of force when necessary, the level of force applied must reflect the totality of the circumstances surrounding each situation.

Background

Over the last decade, the U.S. Border Patrol has benefited exponentially from substantial gains in personnel, technology, and infrastructure. It is essential that you leverage the additional resources to reduce unnecessary risk to yourself, fellow agents, and the public. Duties should be performed in a deliberate manner with agents seeking tactical advantage in each situation and avoiding actions that place themselves or others at unnecessary risk.

The position you hold is one of great responsibility and trust. The public expects, and our honor and oath demands, that we use all of our abilities, training and tools to accomplish our mission safely.

CBP's policy on the use of deadly force is that deadly force may only be used if an agent has a reasonable belief, based on the totality of the circumstances, that the subject of such force poses an imminent danger of death or serious physical injury to the agent or another person. This

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policy is constitutionally derived and meets a standard that has repeatedly been upheld by the Supreme Court. It is consistent with the policies of the Department of Homeland Security and the Department of Justice, as well as major law enforcement organizations around the country.

During the past year, I have asked Chief Patrol Agents (CPAs) to identify the high risk zones within their respective areas of responsibility in order to develop operational plans to address these risks. Additionally, my staff and I work closely with the Office of Training and Development and through the Centers of Excellence, to further enhance our training and preparedness. We will continue to review training and equipment requirements for the U.S. Border Patrol and our intermediate force instruction to ensure that we are incorporating best practices, the most effective tools, and appropriate training. As part of these ongoing efforts, CBP is in the final stages of developing an update to the CBP Use of Force Handbook and we will begin negotiations with the bargaining units in the near future.

In addition, we have worked with the Office of Training and Development to design and implement new training scenarios at the Border Patrol Academy and we are testing new equipment for operational use. The proposed changes in policy seek, among other things, to make you safer and better prepared to confront and minimize your risk of vehicular assault and criminal assault by individuals throwing rocks or other projectiles.

As our operational environment changes, we too must change, adapting our methods in executing our border security mission while minimizing risk to ourselves and others. We must continually assess our policies, tactics, procedures, training and equipment available to our agents to appropriately mitigate risk.

Directive

In order to lessen the likelihood of deadly force situations and reduce the risk of injury or death to agents and others, I am implementing the following directive effective immediately, which clarifies existing guidelines contained in the CBP Use of Force Policy:

- (1) In accordance with CBP's current Use of Force policy, agents shall not discharge their firearms at a moving vehicle unless the agent has a reasonable belief, based on the totality of the circumstances that deadly force is being used against an agent or another person present; such deadly force may include a moving vehicle aimed at agents or others present, but would not include a moving vehicle merely fleeing from agents. Further, agents should not place themselves in the path of a moving vehicle or use their body to block a vehicle's path.
- (2) Agents should continue, whenever possible, to avoid placing themselves in positions where they have no alternative to using deadly force. Agents shall not discharge firearms in response to thrown or hurled projectiles unless the agent has a reasonable belief, based on the totality of the circumstances, to include the size and nature of the projectiles, that

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the subject of such force poses an imminent danger of death or serious injury. Agents should obtain a tactical advantage in these situations, such as seeking cover or distancing themselves from the immediate area of danger.

Supervisors are instructed to address this directive at musters, to include using alternative methodologies, such as setting up controlled tire deflation devices, acquiring additional back-up, utilizing technology and less-than-lethal equipment, taking appropriate cover, and recognizing when to engage or subsequently disengage. Additionally, agents and supervisors will use this memorandum when planning field operations. To promote safety, it is imperative that agents and supervisors conduct contingency planning prior to deployment and adjust plans as situations on the ground evolve.

Responsibilities

CPAs will use risk assessments and identify their respective violence prone areas and develop appropriate deployment of assets and personnel. CPAs will periodically reassess deployment strategies to determine whether they are still effective responses to the evolving threat and will identify equipment requirements for use in potentially high-risk situations and violence prone areas.

Supervisors will ensure all available weapons systems and equipment will be made accessible to agents in violent prone areas for appropriate responses to safely mitigate incidents they may be likely to encounter. Supervisors are instructed to address training on use of force at musters, to include using alternative methodologies, such as setting up controlled tire deflation devices, acquiring additional back-up, utilizing technology and less-than-lethal equipment, cover and concealment, and recognizing appropriate tactics for engagement.

Agents will use this directive and continue to employ enforcement tactics and techniques that effectively bring an incident under control, while promoting the safety of the agent and the public. In all cases, Agents will continue to seek to maintain their safety without unnecessarily placing themselves or others at risk.

I encourage you to have discussions with your peers and supervisors, and if you need clarification on policies or procedures, do not hesitate to ask. I cannot stress enough how important it is to physically and mentally prepare yourselves, so that when dangerous situations arise, you increase your chances of survivability while limiting unnecessary risk to others. It is anticipated that these initial steps will help reduce the likelihood of assaults against our agents.

For my part, and with your assistance, I will continue to assess the need for operational adjustments, dictated by situations in the field. As you are keenly aware, our border security mission is not static and we must forever remain vigilant against those seeking entry into our country to do us harm.

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Something that has resonated with me since becoming a Border Patrol agent 26 years ago is remembering that an important part of our job in the course of securing the homeland is to make it home every day at the end of each shift. Honor First!